

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to Richard Orlen
Sheldon; Citation No. 115378

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge Barbara L. Neilson on August 14, 2012. Conservation Officer Thor Nelson participated in the Conference on behalf of the Department of Natural Resources (DNR). Richard O. Sheldon participated on his own behalf. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on August 14, 2012.

STATEMENT OF ISSUE

The issue presented in this matter is whether Richard O. Sheldon was properly issued a civil citation under Minn. Stat. §84D.10, subd. 4(b),¹ on May 13, 2012, for transporting his watercraft with the drain plug in place.

The Administrative Law Judge concludes that Mr. Sheldon violated Minn. Stat. § 84D.10, subd. 4(b), on that date, and recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 13, 2012, Richard O. Sheldon transported his boat from his home in Lakeville to Prior Lake. The boat's drain plug was removed during the trip. Before he arrived at the Sandpoint public boat access on the north side of Prior Lake, Mr. Sheldon stopped along Crest Avenue (a public road) and placed the plug back in the boat. He then proceeded to the boat access.²

¹ Unless otherwise noted, all citations to Minnesota Statutes are to the 2011 edition.

² Testimony of Richard Sheldon; Appeal letter dated May 25, 2012.

2. DNR Conservation Officers Thor Nelson and Adam Block were on duty at the Sandpoint public boat access on May 13, 2012. At approximately 4:10 p.m., one or both Officers saw Mr. Sheldon turn off Crest Avenue and enter the public access. They noticed that the drain plug in his boat was in place from the time the vehicle pulling the boat left the public road until it entered the public access.³

3. Officer Nelson issued Mr. Sheldon Civil Citation No. 115378. The citation assessed a \$50 penalty for failing to remove the drain plug from watercraft during transport on public roads.⁴

4. Mr. Sheldon filed a timely appeal of the citation. In his appeal letter, he indicated that he had stopped to place the plug in the boat prior to reaching the ramp because of the busy Mother's Day traffic in the parking lot. He did not want to keep other boaters waiting and wanted to launch his boat without delay. He indicated that he had only been a boat owner for a month, was new to the regulations, and did not realize he had to actually be on the ramp before installing the plug. He argued that the language of the statute is vague with respect to where the plug is permitted to be placed into the boat and urged dismissal of the citation.⁵

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the Administrative Law Judge and the Commissioner of Natural Resources pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. Minnesota Statutes § 84D.10, subd. 4(b), states: "Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment."

3. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.⁶

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Sheldon filed a timely appeal and request for hearing.

5. The DNR has substantiated the violation and Citation.

³ Test. of Thor Nelson.

⁴ Test. of T. Nelson; Civil Citation No. 115378.

⁵ See appeal letter from R. Shelton dated May 25, 2012.

⁶ See Minn. Stat. § 84D.13, subd. 4(4).

6. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 115378 and require Mr. Sheldon to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, and for the reasons set forth in the Memorandum below which is incorporated in the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 115378 issued to Richard O. Sheldon be AFFIRMED.

September 13, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

During the hearing, Mr. Sheldon asserted that he was a new boat owner at the time the citation was issued and he was not familiar with the requirement that drain plugs must be removed while boats are being transported. He acknowledged that the Minnesota Boating Guide stated that plugs must remain removed and all water draining devices must remain open “while transporting,” but argued that it was unclear what was meant by “transporting.” He maintained that the citation should be dismissed as a result.

Officer Nelson indicated that Minnesota law has, for several years, required that drain plugs be removed while boats are being transported. He noted that the DNR has engaged in efforts to educate the public regarding this requirement for several years, and that the DNR has now instructed its Conservation Officers to issue citations for violations of the law. Officer Nelson interprets the law to require that boats have their drain plugs removed if they are being transported on public roadways, and indicated that he would not have found a violation if the plug had been inserted after Mr. Sheldon had pulled off Crest Avenue and entered the parking area near the boat ramp.

The Administrative Law Judge concludes that Officer Nelson's interpretation that the statute applies when a boat is being pulled on a public roadway reflects a fair and common-sense reading of the statute. When the requirement to remove drain plugs was originally added to Minnesota Statutes in 2010, the language clearly required that persons "leaving waters of the state must drain boating-related equipment holding water and live wells and bilges by removing the drain plug before transporting the watercraft and associated equipment *on public roads*" and that drain plugs "must be removed or opened while transporting watercraft *on a public road*."⁷ In 2011, the statute was further amended, as follows:

~~Persons leaving public waters; report~~ transporting water-related equipment.

- (a) ~~A person~~ When leaving waters of the state a person must drain ~~boating-related~~ water-related equipment holding water and live wells and bilges by removing the drain plug before transporting the ~~watercraft and associated~~ water-related equipment ~~on public roads~~ off the water access site or riparian property.
- (b) Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting ~~watercraft on a public road~~ water-related equipment.⁸

Although the specific reference to "public roads" was deleted from the most recent version of the statute, it remains clear that the restriction is intended to apply once boats leave the shoreline or the access site.

It is undisputed that Mr. Sheldon's boat was transported for at least a short distance on a public road with its drain plug in place, as charged in the Citation. This amounts to a violation of the statute. Although Mr. Sheldon was not aware of the statute, he is properly expected to comply with the Minnesota laws applicable to boaters. The Administrative Law Judge concludes that the citation was properly issued.

B.L.N.

⁷ See Laws of Minnesota 2010, Chapter 361, Art. 4, Sec. 25 (emphasis added).

⁸ See Laws of Minnesota 2011, Chapter 107, Sec. 26 (amending Minn. Stat. § 84D.10, subd. 4(a) and (b)).